THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.17850 of 2006

Dated: 04-09-2006

Between:

Marri Satyanarayana.

..... PETITIONER

AND

The Mandal Revenue Officer,
Seethanagaram Mandal, East Godavari Adistrict.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S. RAO

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ORDER:

The petitioner is the proprietor of poultry farm situated in land admeasuring Ac.1.70 cents in survey Nos.129/2 and 131/1 situated at Mirthipadu Village, Seethanagram Mandal, East Godavari District. The petitioner alleges that the poultry farm has been in existence since 1990, that the same was originally started by one Jonnalagadda Harinath, who sold the same to one Thota Nagamani, and that one G. Vijayalakshmi purchased the same from Nagamani and again sold it to him. The owners of the poultry farm allegedly obtained permission from the Gram Panchayat and the District Medical and Health Officer, East Godavari and allegedly maintaining the poultry form in a healthy atmosphere. The petitioner alleges that one G. Laxmi who is interested in taking over the poultry farm brought pressure on the respondent through her cousin Sri Chittor Ravinder, Congress MLA, Borgipadu Village, whereupon the respondent issued the impugned order dated 03.08.2006 directing the petitioner to close the poultry farm to safeguard the health of the villagers in the surrounding area.

The learned counsel for the petitioner vehemently contends that MRO failed to exercise power under Section 133 of the Criminal Procedure Code, 1973 (Cr.P.C.) in proper manner. According to the learned counsel, Section 133 Cr.P.C is attracted only when the Executive Magistrate forms an opinion that any activity is injurious to health. He would urge that MRO passed the impugned order without such opinion. He placed reliance on the decisions of this Court in **Executive Officer, Gram Panchayat, T. Kothapalli v. Dadda Satvavath**[1], **Sri Ayyappa Stone Crusher, Kuntrapakam v. MRO, Tirupathi**[2] and **M. Yellaiah v. State of A.P.**[3]**.**

A perusal of the impugned order would show that the respondent passed conditional order under Section 133(1) Cr.P.C. and called upon the petitioner to show cause as to why the order should not be enforced. As rightly pointed out by the learned Assistant Government Pleader for Revenue (General), all the Executive Magistrates are subordinate to the Sessions Judge under Section 397 Cr.P.C. Therefore, even against the conditional order under Section 133(1) Cr.P.C., the petitioner can file a revision petition under Section 397 Cr.P.C. when he can urge all the grounds raised hereinabove. Whether the poultry farm of the petitioner is injurious to the health or physical comfort of the community and whether it is causing obstruction or nuisance, which requires removal by

the Executive Magistrate, are questions which can be decided by the District and Sessions Judge having jurisdiction over the matter, and therefore, this Court is not inclined to go into these questions. Liberty is given to the petitioner to prefer a revision petition on the file of the Court of the District and Sessions Judge, East Godavari. As and when such revision petition is filed, the learned District and Sessions Judge may entertain the same and pass appropriate orders.

The writ petition, with the above observations, is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

04th September, 2006
ghn

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[1] 1999(1) ALD 701

[2] 2001(1) ALD (Crl.) 231 (AP)

[3] 2001(2) ALT (Crl.) 163 (AP)